



House of Representatives

General Assembly

File No. 733

January Session, 2015

Substitute House Bill No. 7034

House of Representatives, April 23, 2015

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING COSTS INCURRED BY STATE RESIDENTS
WHEN RESPONDING TO CERTAIN DISCOVERY REQUESTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (f) of section 52-148e of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2015*):

4 (f) (1) Deposition of witnesses living in this state may be taken in
5 like manner to be used as evidence in a civil action or probate
6 proceeding pending in any court of the United States or of any other
7 state of the United States or of any foreign country, on application to
8 the court in which such civil action or probate proceeding is pending
9 of any party to such civil action or probate proceeding. The Superior
10 Court shall have jurisdiction to quash or modify, or to enforce
11 compliance with, a subpoena issued for the taking of a deposition
12 pursuant to this subsection.

13 (2) Any person to whom a subpoena has been directed, which

14 subpoena commands (A) the person's appearance at a deposition, and
15 (B) the production, copying or inspection of books, papers, documents
16 or tangible things may, within fifteen days after the service thereof or
17 on or before the time specified in the subpoena for compliance if such
18 time is less than fifteen days after service, serve upon the party who
19 requested issuance of the subpoena written objection to appearing,
20 producing, copying or permitting the inspection of such books, papers,
21 documents or tangible things.

22 (3) If a nonparty witness objects on the ground that the subpoena
23 will cause undue burden or expense to a person who is not a party to
24 the civil action or probate proceeding, such written objection shall be
25 accompanied by an affidavit of costs setting forth the estimated or
26 actual costs of compliance with such subpoena, including, but not
27 limited to, the nonparty witness's attorney's fees or the costs to such
28 witness of electronic discovery. If a nonparty witness makes such
29 written objection, the party who requested issuance of the subpoena
30 (A) shall not be entitled to compel such witness's appearance or
31 receive, copy or inspect the books, papers, documents or tangible
32 things, or inspect any premises where such materials may be kept,
33 except pursuant to an order of the court in which the civil action or
34 probate proceeding is pending, and (B) may, upon notice to the
35 objecting nonparty witness, file a motion with the Superior Court for
36 an order to compel such witness's appearance and production, copying
37 or inspection of such materials in accordance with the terms of such
38 subpoena. When ruling on such motion to compel, the Superior Court
39 shall make a finding as to whether the subpoena subjects the nonparty
40 witness to undue burden or expense prior to entering any order to
41 compel such nonparty witness's appearance and the production,
42 copying or inspection of such materials. If the Superior Court finds
43 that the subpoena issued to the nonparty witness subjects such witness
44 to undue burden or expense, any order to compel such witness's
45 appearance and production, copying or inspection of such materials
46 shall protect the witness from undue burden or expense resulting from
47 compliance with such subpoena and, except in the case of a subpoena
48 commanding the production, copying or inspection of medical records,

49 may include, but not be limited to, the reimbursement of such
50 witness's reasonable costs of compliance, as set forth in the witness's
51 affidavit of costs. The party who requested issuance of the subpoena
52 may, if objection has been made, move upon notice to the deponent for
53 an order at any time before or during the taking of the deposition.

54 (4) The provisions of this subsection shall not apply to a civil action
55 filed under section 52-190a.

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2015 | 52-148e(f) |

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which creates provisions regarding depositions for civil or probate proceedings and allows for reimbursement of witness' costs, does not result in a cost to the state or municipalities.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 7034*****AN ACT CONCERNING COSTS INCURRED BY STATE RESIDENTS
WHEN RESPONDING TO CERTAIN DISCOVERY REQUESTS.*****SUMMARY:**

Existing law allows taking the deposition of someone living in Connecticut for a civil or probate proceeding in a federal court or another state's or country's court. The Superior Court can quash, modify, or enforce a subpoena for the deposition.

This bill allows someone who receives a subpoena related to an action in another jurisdiction that requires the person to appear at a deposition and produce, provide copies of, or allow inspection of books, papers, documents, and other things to serve a written objection on the party who requested the subpoena. The subject of the subpoena must serve the objection by the earlier of 15 days after being served with the subpoena or the date specified for complying with the subpoena.

The bill provides additional protections for witnesses who are not parties to such a civil or probate proceeding. It allows the witness to make a written objection that a subpoena will cause an undue burden or expense and attach an affidavit of costs with the estimated or actual costs of complying with the subpoena, which can include attorneys' fees and electronic discovery costs. After an objection, the party who requested a subpoena can make a motion for an order regarding the subpoena, after providing notice, any time before or during a deposition. Under the bill:

1. the party who requested the subpoena must obtain an order from the court where the proceeding is pending to compel compliance and can, after notifying the objecting witness, file a

motion in Superior Court to order compliance;

2. on such a motion, the Superior Court must determine whether the subpoena imposes an undue burden or expense; and
3. if the court finds such an undue expense or burden, any compliance order must protect the witness from it and, except for a subpoena related to medical records, the order can include at least reimbursement or reasonable compliance costs according to the witness's affidavit of costs.

The bill's provisions do not apply to actions under Connecticut law alleging negligence by a health care provider.

EFFECTIVE DATE: October 1, 2015

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 5 (04/06/2015)